

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF VIRGINIA
(Alexandria Division)

2010 OCT 21 P 12:51

CLERK OF DISTRICT COURT
ALEXANDRIA, VIRGINIA

JAY NUSSBAUM, Individually
and as Personal Representative of the
Estate and Next of Kin of PATRICIA
NUSSBAUM, Deceased,
9324 Georgetown Pike
Great Falls, VA 22066

Plaintiff,

v.

C.A. No. 1:10cv1198
AJT/JFA

CVS CAREMARK CORPORATION,
One CVS Drive
Woonsocket, RI 02895

SERVE: CT Corporation System
4701 Cox Road, #301
Glen Allen, VA 23060-6802

TRIAL BY JURY
REQUESTED

and

DRS. LANGEVIN, LARSEN, HAMM
& COHEN, P.C., t/a
CHEVY CHASE PULMONARY
ASSOCIATES,
5530 Wisconsin Avenue #930
Chevy Chase, MD 20815

SERVE: Metropolitan Agents, Inc.
4550 Montgomery Avenue
Suite 775N
Bethesda, MD 20815

and

BRUCE J. KLORES
& ASSOCIATES
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION

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ASSOCIATES,)
5530 Wisconsin Avenue #930)
Chevy Chase, MD 20815)
SERVE: Metropolitan Agents, Inc.)
4550 Montgomery Avenue)
Suite 775N)
Bethesda, MD 20815)
)
and)
)
CARLOS E. PICONE, M.D.,)
5530 Wisconsin Avenue)
Suite #930)
Chevy Chase, MD 20815)
)
Defendants.)

COMPLAINT

Comes now the Plaintiff, Jay Nussbaum, as surviving spouse and Personal Representative of the Estate and Next of Kin of Patricia Nussbaum, deceased, by and through counsel, Bruce J. Klores, Thomas W. Mitchell and Bruce J. Klores & Associates, P.C. and for his complaint against the defendants, CVS Caremark Corporation, Carlos E. Picone, M.D., Drs. Langerin, Larsen, Hamm & Cohen, P.C., and Chevy Chase Pulmonary Associates, alleges as follows:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §1332, because there is complete diversity of citizenship between the Plaintiff and the defendants, and the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

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2. The Court is the proper venue for this case under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

3. This action is filed within the relevant statute of limitations.

THE PARTIES

4. The plaintiff, Jay Nussbaum, is a citizen (resident) of the Commonwealth of Virginia, was the husband of Patricia Nussbaum, and is the duly appointed Personal Representative of her Estate and Next of Kin, which includes the plaintiff and Mrs. Nussbaum's children and grandchildren. Patricia Nussbaum died on March 6, 2009, at Reston Hospital as a direct and proximate result of the Defendants' wrongful conduct, including the ordering, prescribing and dispensing of contra-indicated and dangerous medications.

5. Defendant Carlos E. Picone, M.D. ("Dr. Picone") is a citizen (resident) of the State of Maryland, and is a licensed practicing physician who provided care to the decedent during the time frame complained of herein in Maryland.

6. Defendant Chevy Chase Pulmonary Associates is a Maryland corporation with its principal place of business in Maryland, and at all relevant times was engaged in the business of providing health care and provided health care to the decedent.

7. Defendant Drs. Langevin, Larsen, Hamm & Cohen, P.C. is a Maryland corporation with its principal place of business in Maryland, and at all relevant times was engaged in the business of providing health care and provided health care to the decedent. On information and belief, Defendants Chevy Chase Pulmonary Associates

is a trade name for Defendant Drs. Langevin, Larsen, Hamm & Cohen, P.C. They are hereafter collectively referred to as "Chevy Chase Pulmonary Associates."

8. Defendant CVS Caremark Corporation ("CVS") is a Delaware corporation with its principal place of business in Rhode Island.

THE FACTS

9. Defendant Dr. Picone, personally or through his direction to members of his office staff at Chevy Chase Pulmonary Associates, prescribed medication to the Plaintiff's decedent over the telephone, while the Plaintiff's decedent was physically located in the Commonwealth of Virginia, and called such prescriptions in to be filled at a CVS pharmacy located in Great Falls, Virginia, which pharmacy was owned and operated by defendant CVS, and which thereafter dispensed said medications to Mrs. Nussbaum.

10. Defendant Chevy Chase Pulmonary Associates, through the actions of its agents and employees, including but not limited to defendants Dr. Picone and office staff, was negligent and caused tortious injury in the Commonwealth of Virginia. Defendant Chevy Chase Pulmonary Associates employed Dr. Picone and others, and is responsible, as a matter of law, for their actions and omissions, all of which were committed in the course of and within the scope of their employment. Defendants Dr. Picone and Chevy Chase Pulmonary Associates, through their agents and employees, provided medical care to the Plaintiff's decedent for many years before her death, and owed a duty to provide care and treatment in conformance with the prevailing standards of care. On many occasions, defendant Chevy Chase Pulmonary Associates and its agents and employees rendered medical advice to Mrs.

Nussbaum while Mrs. Nussbaum was on the telephone, physically located in Virginia.

Moreover, upon information and belief, defendant Chevy Chase Pulmonary Associates treats many patients who are residents of the Commonwealth of Virginia, and employs physicians licensed to practice in the Commonwealth of Virginia.

11. Defendant CVS, through the action of its agents and employees, provided medical care to plaintiff's decedent in Virginia, and owed a duty to provide medical care and treatment in conformance with the prevailing standard of care.

12. On or about March 2, 2009, Dr. Picone and "Vina," an employee of Chevy Chase Pulmonary Associates, called the CVS pharmacy in Great Falls, Virginia and ordered over the telephone for Mrs. Nussbaum the drug "Bactrim DS," presumably to treat her upper respiratory symptoms.

13. Upon receiving the prescription order from the co-defendants Dr. Picone and Chevy Chase Pulmonary Associates, CVS dispensed to Mrs. Nussbaum the drug Bactrim DS presumably for upper respiratory symptoms.

14. It was a violation of the standard of care for defendants Dr. Picone and Chevy Chase Pulmonary Associates to order this medication for Mrs. Nussbaum, and for CVS to fill the prescription, because Mrs. Nussbaum was already taking the blood thinner Coumadin. CVS, Dr. Picone and Chevy Chase Pulmonary Associates knew or should have known that Mrs. Nussbaum was taking Coumadin. CVS, Dr. Picone and Chevy Chase Pulmonary Associates also knew or should have known Bactrim DS was contra-indicated for Mrs. Nussbaum because she was taking Coumadin. It never should have been ordered by Dr. Picone or Chevy Chase Pulmonary Associates, and should never have been dispensed by defendant CVS, as it was in this case.

15. The Defendants, by themselves and through their agents and employees, provided pharmacy and medical care and treatment to Patricia Nussbaum at various times, up to and including the date of her death. A doctor/patient and pharmacy patient relationship existed between the decedent and the Defendants.

16. The Defendants, individually and through their agents and employees, were negligent in their care and treatment of the Plaintiff's decedent in that they, *inter alia*, ordered, prescribed and administered medication which was dangerous and contra-indicated given Ms. Nussbaum's health and other medications she was taking.

17. As a direct and proximate result of the Defendants' negligence, Patricia Nussbaum presented to Reston Hospital on March 4, 2009, with uncontrollable bleeding, suffered agonizing and excruciating pain, and as a proximate result of Defendants' negligence, died on March 6, 2009.

18. Absent the Defendants' negligence, Patricia Nussbaum would not have died or suffered those damages, would have lived a productive and normal life, and had a normal life expectancy.

COUNT I

(Wrongful Death Action)

19. Plaintiff, Jay Nussbaum, as Personal Representative of the Estate of Patricia Nussbaum, hereby incorporates paragraphs 1 through 18.

20. As a direct and proximate result of the above negligence of the Defendants, the decedent's next of kin, including Jay Nussbaum and the children of Jay and Patricia Nussbaum and the grandchildren, have been injured and damaged, including, but not limited to, the following particulars:

- a. pecuniary loss to the next of kin;
- b. loss of services;
- c. loss of society and comfort of the decedent;
- d. grief, sorrow and loss of solation stemming from decedent's death; and
- e. being otherwise injured and damaged.

WHEREFORE, plaintiff Jay Nussbaum, individually and as Personal Representative of Patricia Nussbaum, on behalf of himself and the other next of kin, demands judgment against the Defendants, jointly and severally, in the amount of TWO MILLION DOLLARS (\$2,000,000.00), plus interest and costs, and for any other relief found just and proper by the jury and the Court.

COUNT II

(Survival Action)

21. Plaintiff, Jay Nussbaum, as Personal Representative of the Estate of Patricia Nussbaum, hereby incorporates paragraphs 1 through 20 above.

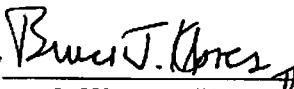
22. As a result of the negligence of the Defendants, Patricia Nussbaum suffered physical and emotional pain and suffering.

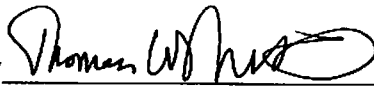
WHEREFORE, plaintiff Jay Nussbaum, individually and as Personal Representative of the Estate of Patricia Nussbaum, demands judgment against the Defendants, jointly and severally, in the amount of ONE MILLION DOLLARS (\$1,000,000.00), plus interest and costs, and for any other relief found just and proper by the jury and the Court.

October 20, 2010

Respectfully submitted,

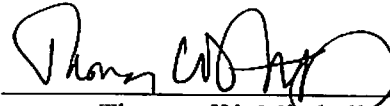
BRUCE J. KLORES & ASSOCIATES, P.C.

By 
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DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury on all issues.


Thomas W. Mitchell

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